STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of MORTON THOMAS MOORE,
Deceased.

PATRICIA KUERBITZ,

Petitioner-Appellee,

v

CHERYL BALLOU,

Respondent-Appellant.

UNPUBLISHED
November 1, 2002

No. 232589
Roscommon Probate Court
LC No. 00-051642-DE

Before: Cooper, P.J., and Jansen and R. J. Danhof*, JJ.

PER CURIAM.

Following a bench trial, respondent appeals as of right the probate court's order vacating the purported will of Morton Thomas Moore, decedent. We affirm.

This appeal specifically concerns the authenticity of a will that was allegedly signed by the decedent. The document in question named respondent, the decedent's fiancé, as the personal representative. Pursuant to this document, the decedent's estate was to be equally divided among respondent, petitioner, other family members, and charities. The estate primarily consisted of an anticipated legal settlement.

Respondent initially claims that the trial court erroneously placed the burden of proof on respondent to establish that the signatures on the will were genuine. We disagree. A probate court's findings of fact are reviewed on appeal for clear error. MCR 2.613(C); *In re Coe Trusts*, 233 Mich App 525, 531; 593 NW2d 190 (1999). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake was made. *In re Estes Estate*, 207 Mich App 194, 208; 523 NW2d 863 (1994). Questions of law are subject to review de novo. *In re Bem Estate*, 247 Mich App 427, 433; 637 NW2d 506 (2001).

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Under MCL 700.3407(1)(b), the will proponent "has the burden of establishing prima facie proof of due execution . . . ." Conversely, the will contestant "has the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation." MCL 700.3407(1)(c). A will *must* be signed by the testator, or some other individual pursuant to the testator's direction and in his conscious presence, in order for it to be valid. MCL 700.2502(1)(b). The genuineness of the signature goes directly to the basic requirements of a will. A will containing a forged signature fails the statute's requirements for due execution because it is not signed by the testator or under the testator's direction. As the will proponent must ultimately prove that the will was properly executed, MCL 700.3407(1)(d), the trial court did not err when it placed the burden on respondent to prove that the signatures were authentic.

To the extent respondent claims that the attestation clause creates a presumption that the will was executed in conformity therewith, that presumption may be rebutted. *Utley v First Congregational Church*, 368 Mich 90, 102; 117 NW2d 141 (1962); *In re Clark Estate*, 237 Mich App 387, 392-393; 603 NW2d 290 (1999). In the case at bar, there was substantial evidence to rebut the claim in the attestation clause that the decedent signed the will on February 4, 2000. Indeed, several of the decedent's family members testified that they were with him on February 4, 2000, and that he could not have gone with respondent to her parent's house without their knowledge. Additionally, a handwriting expert studied the decedent's signatures on the proposed will and determined that they were forged. In light of this evidence, we find no clear error in the trial court's decision.

Respondent next argues that the trial court erred because its opinion failed to specifically address petitioner's financial interest in the case and the subscribing witnesses' lack of financial interest. We disagree.

The trial court did not expressly set forth either respondent's or petitioner's financial interest in its opinion. However, their competing interests were obvious and there is no evidence that the trial court failed to consider petitioner's status under the laws of intestacy should the will fail. MCL 700.2103. A trial judge is presumed to know the applicable law. See *People v Sherman-Huffman*, 466 Mich 39, 43; 642 NW2d 339 (2002). Moreover, respondent fails to cite any authority for her contention that a probate court must set forth every possible consideration in its opinion. See *Chapdelaine v Sochocki*, 247 Mich App 167, 174; 635 NW2d 339 (2001).

We afford the probate court broad discretion in determining credibility "because of its unique vantage point regarding witnesses, their testimony, and other influencing factors not readily available to the reviewing court." *In re Erickson Estate*, 202 Mich App 329, 331; 508 NW2d 181 (1993). Thus, we find that respondent failed to establish any error in the trial court's weighing of the witnesses' interests and credibility.

Respondent also asserts that the trial court erred when it concluded that petitioner's witnesses did not know about the will until after respondent filed her petition. We disagree.

The pertinent portion of the trial court's opinion states as follows:

> The next day Patty and Patrick went back to Cheryl Ballou's house . . . . The Kuerbitzes were there also and Tommy's situation was discussed. Tommy

> generally shared his thoughts as to how his estate should be divided and insisted that his mother would be the Personal Representative of his estate with Patty Williams serving as the alternate. *Mrs. Kuerbitz's witnesses agree, however, that no mention was made of any will during that meeting and that no will was passed around or shown to anyone that day. In fact, all family members agree that the first time they heard anything about a will was when it was filed with Cheryl Ballou's Petition on August 29, 2000.* [Emphasis added.]

While several witnesses indicated that the decedent mentioned a will, there was no testimony by petitioner's witnesses that a will was in existence at the time of the family meeting. Rather, the witnesses testified that the decedent merely expressed an intent to write a will and that they never actually saw or were aware of an existing will. Reviewing the witnesses' testimony and the trial court's statements in context, we find no clear error. *In re Erickson, supra* at 331.

Respondent finally contends that the trial court clearly erred when it held that the decedent's signatures on the will were not genuine. We disagree.

The trier of fact is in the best position to determine the proper weight to afford a handwriting expert's testimony. *In re Skoog Estate*, 373 Mich 27, 29; 127 NW2d 888 (1964); *Marlo Beauty Supply, Inc v Farmers Ins Group of Cos*, 227 Mich App 309, 323; 575 NW2d 324 (1998). In the instant case, the expert witness testified decisively that in his opinion the signatures were forged. While he opined that pain or writing with an off-hand could make writing larger and more spaced out, he maintained that it would not change the basic letter formation. The expert witness further noted that there was a consistent tremor and several blunt stops in the will signatures that indicated forgery. Respondent did not present any expert testimony to refute these claims. Accordingly, the trial court did not clearly err when it held that the will signatures were forged.

Affirmed.

/s/ Jessica R. Cooper
/s/ Kathleen Jansen
/s/ Robert J. Danhof